Supreme Court, U.S.
FILED
DEC 20 2007
OFFICE OF THE CLERK

79

No. _____

07-840

In The

Supreme Court of the United States

BAUHAUS USA, INC.,

Petitioner,

v.

LILLIE REGINA HOLMES COPELAND, NATURAL GUARDIAN AND NEXT FRIEND OF R.D.H.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi

PETITION FOR A WRIT OF CERTIORARI

THOMAS H. LAWRENCE
Counsel of Record
LANCE K. OLIVER
POLLY M. HALEY
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
(901) 844-4430

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

This Court previously held state laws preempted by ERISA where those laws that disrupt uniform administration of the employee benefit plan or conflict with plan terms. Here, the Mississippi Supreme Court held that Mississippi law invalidating subrogation rights against a minor without prior court approval is not preempted by ERISA even though the plan terms allow for these rights and other states do not impose these requirements. Did the Mississippi Supreme Court err?

LIST OF PARTIES

The caption of the case in this Court contains the names of all the parties. La-Z-Boy Incorporated, a publicly held company, owns 100% of the stock of Bauhaus USA, Inc.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

BASIS FOR JURISDICTION IN THIS COURT 2

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED 3

STATEMENT OF THE CASE 4

ARGUMENT FOR GRANTING THE WRIT 9

I. The Court should grant the petition to resolve a conflict between a decision of the highest court in Mississippi and decisions from this Court over whether a Mississippi state common law is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(a) 9

A. The Supreme Court of Mississippi's decision conflicts with this Court's decision in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990) 9

B. The Supreme Court of Mississippi's decision conflicts with this Court's decision in *Egelhoff v. Egelhoff*, 532 U.S. 141 (2000) 13

CONCLUSION 16

TABLE OF CONTENTS – Continued

Page

APPENDIX

Order of the Supreme Court of Mississippi affirming the denial of Petitioner's motion for summary judgment in *In Re: Guardianship of R.D.H. v. Bauhaus USA, Inc.*, 965 So. 2d 662 (Miss. 2007) ..... App. 1

Order of the Chancery Court of Lee County Mississippi in *In Re: Lillie Regina Holmes Copeland v. Bauhaus USA, Inc.*, No. 2006-CA-00465 ..... App. 14

Order of the Chancery Court of Lee County Mississippi in *In Re: Lillie Regina Holmes Copeland v. Bauhaus USA, Inc.*, No. 2006-CA-00465, denying Petitioner's motion for summary judgment ..... App. 16

TABLE OF AUTHORITIES

Page

CASES

Egelhoff v. Egelhoff, 532 U.S. 141 (2001) 13, 14, 15, 16, 17

FMC Corp. v. Holliday, 498 U.S. 52 (1990) ..... *passim*

In Re: Guardianship of R.D.H. v. Bauhaus USA, Inc., 965 So. 2d 662 (Miss. 2007) ..... *passim*

McCoy v. Preferred Risk Ins. Co., 471 So. 2d 396 (Miss. 1985) 11

Methodist Hosps. of Memphis v. Marsh, 518 So. 2d 1227 (Miss. 1988) 11

STATUTES

28 U.S.C. § 1254(1) 2, 3

29 U.S.C. § 1001, *et seq.* 1

29 U.S.C. § 1144(a) 3, 9, 10, 12, 16

29 U.S.C. § 1144(b)(2)(A) 4, 10

29 U.S.C. § 1144(b)(2)(B) 4, 10

75 Pa. Cons. Stat. § 1720 (1987) 11

RULES

Supreme Court Rule 13(1) 2

Supreme Court Rule 14(e) 2

OPINIONS BELOW

This action was initiated by Respondents in the Chancery Court for Lee County, Mississippi. On May 17, 2000, Respondents filed a petition for authority to settle a doubtful claim of a minor in Lee County Chancery Court requesting that the trial court allocate interpled settlement proceeds recovered in a personal injury action on behalf of the Minor. The state court chancellor entered an order requiring that Petitioner, along with other lien holders, be made party defendants to the interpled funds. Respondents then filed an amended petition, requesting that the court find that the reimbursement claims of Petitioner be extinguished and that the court hold that the settlement proceeds belonged solely to Respondents. The state court chancellor entered an order allocating all interpled settlement proceeds, except for $78,161.47, which was to be held in the court's registry pending further order from the court. Petitioner then filed its motion for summary judgment requesting that the court hold that Mississippi's common law requiring state chancery court approval to assign a minor's right to insurance proceeds is preempted by the Employee Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq*. The state chancery court denied Petitioner's motion for summary judgment, and the court's order is reprinted in Appendix, App. 16-19. There is no official citation to that order. The parties participated in a final hearing, and the chancellor entered a final order granting Respondents' petition to settle the Minor's claim and

denying Petitioner's subrogation and reimbursement interest. Further, the chancellor ordered the Lee County Chancery Court Clerk to disburse the remaining interpled funds to Respondents. The court's order is reprinted in Appendix, App. 14-15, and there is no official citation to that order. Petitioner filed an appeal to the Supreme Court of Mississippi and filed a motion to stay the trial court's order pending appeal. The chancery court denied Petitioner's motion to stay. On appeal, the Supreme Court of Mississippi affirmed the decision of the Lee County Chancery Court. The Supreme Court of Mississippi's order is reprinted in Appendix, App. 1-14. The citation for the opinion is *In Re: Guardianship of R.D.H. v. Bauhaus USA, Inc.*, 965 So. 2d 662 (Miss. 2007).

BASIS FOR JURISDICTION IN THIS COURT

This action was filed in the Chancery Court for Lee County, Mississippi. The court entered judgment in favor of Respondents. Petitioner timely appealed to the Supreme Court of Mississippi. The Supreme Court of Mississippi entered its opinion on September 27, 2007. This petition is timely filed under Supreme Court Rule 13(1), and this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Pursuant to Supreme Court Rule 14(e), Petitioner provides the following specific information:

(i) Date the judgment or order sought to be reviewed was entered:

September 27, 2007, by the Supreme Court of Mississippi

(ii) Date of any order respecting rehearing/extension of time:

Not applicable to this Petition

(iii) Rule 12.5 considerations:

Not applicable to this Petition

(iv) Statutory provision conferring jurisdiction:

28 U.S.C. § 1254(1)

(v) Rule 29.4 statement:

Not applicable to this Petition

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

29 U.S.C. § 1144(a):

Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section (b). This section shall take effect on January 1, 1975.

29 U.S.C. § 1144(b)(2)(A):

> Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

29 U.S.C. § 1144(b)(2)(B):

> Neither an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

STATEMENT OF THE CASE

R.D.H. (the "Minor"), for all relevant times hereto, was a covered person under the Bauhaus Group Employee Benefit Plan (the "Plan"). The Plan is self-funded and covered by the Employee Retirement Security Act of 1974 ("ERISA"). The Minor was injured in an automobile accident on June 1, 1996. As a result of the Minor's injuries from the referenced automobile accident, the Minor incurred medical expenses in the amount of $46,229.45, all of which were paid for by the Plan. The Minor, by and through the Guardian, Lillie Regina Copeland, filed suit against third-party tortfeasors for the damages

incurred by the Minor on June 1, 1996. The Minor settled the third-party personal injury action for $750,000.00.

This case involves the applicability of a specific reimbursement and subrogation provision of the Plan, which entitles the Plan to recoup the benefits paid on behalf of the Minor if the Minor recovers from third parties. The relevant section of the Plan provides:

> Medical care benefits are not payable to or for a person covered under this Plan when the injury or illness to the Covered Person occurs through the act, omission or alleged negligence of another person or which arises out of any claim or cause of action which may accrue against any third party responsible for injury, illness or death to the Covered Employee or Dependent of the Covered Employee (hereinafter named the Covered Person) by reason of their eligibility for benefits under the Plan.
>
> However, the Plan may elect to advance payment for Medical Care expenses incurred for an injury or illness in which a third party may be liable if the Covered Person agrees to the following:
>
> The Covered Person will reimburse the Plan out of the Covered Person's recovery for all benefits paid by the Plan. The Plan will be reimbursed prior to the Covered Person receiving any monies recovered from a Third Party or their insurer as a result of judgment

settlement or otherwise. (This is known as Pro Tanto subrogation).

The Plan has a right to the Covered Person's full cooperation in any case involving the alleged negligence of a third party. In such cases, the Covered Person is obligated to provide the Plan with whatever information, assistance, and records the Plan may require to enforce the rights in this provision. The Covered Person further agrees that in the event that the Plan has reason to believe that the Plan may have a subrogation lien, the Plan may require the Covered Person to complete a subrogation questionnaire, sign an acknowledgment of the Plan's Subrogation rights and an agreement to provide ongoing information before the Plan pays, or continues to pay, any claims. Upon receipt of the requested materials the Plan will commence, or continue, payments of claims according to its terms and conditions.

The Plan may, but is not obligated to, take any legal action it sees fit against the third party or the Covered Person, to recover the benefits the Plan has paid. The Plan's exercise of this right will not affect the Covered Person and his legal representative consent otherwise.

In the event that the Claims Payer determines that a subrogation recovery exists, the Claims Payer retains the right to employ the services of an attorney to recover money due to the Plan. The Covered Person agrees to

> cooperate with the attorney which is pursuing the subrogation recovery. The compensation that the Plan's attorney receives will be paid directly from the dollars recovered from the Plan.
>
> The Plan specifically states that it has no duty or obligation to pay a fee to the Covered Person's attorney for the attorney's services in making any recovery on behalf of the Covered Person.
>
> The Covered Person is obligated to inform their attorney of the subrogation lien and to make no distributions from any settlement or judgment which will in any way result in the Plan receiving less than the full amount of its lien without the written approval of the Plan.
>
> The Covered Person further agrees that he will not release any third party or their insured without prior written approval from the Plan, and will take no action which prejudices the Plan's subrogation right.

The parties have been litigating on the issue of whether the Minor, who was injured and then willingly accepted $46,229.45 in benefits from the Plan, can recover settlement proceeds because of those injuries, and then ignore the terms of the Plan that require full reimbursement to the Plan. This petition concerns whether ERISA preempts Mississippi's common law rule requiring state court approval to assign a minor's right to an ERISA plan for third-party recoveries.

Respondents initiated this action in the Lee Chancery Court for Lee County, Mississippi to determine whether Petitioner's lien could extinguish so that the settlement proceeds could be allocated solely to Respondents. Petitioner then filed its motion for summary judgment requesting that the court hold that Mississippi's law requiring state chancery court approval to assign a minor's right to insurance proceeds is preempted by ERISA. The state chancery court denied Petitioner's motion for summary judgment. The parties participated in a final hearing, and the chancellor entered a final order granting Respondents' petition to settle the Minor's claim and denying Petitioner's subrogation and reimbursement interest. Further, the chancellor ordered the Lee County Chancery Court Clerk to disburse the remaining interpled funds to Respondents. Petitioner filed an appeal to the Supreme Court of Mississippi and filed a motion to stay the trial court's order pending appeal. The chancery court denied Petitioner's motion to stay. On appeal, the Supreme Court of Mississippi affirmed the decision of the Lee County Chancery Court. The citation for the opinion is *In Re: Guardianship of R.D.H. v. Bauhaus USA, Inc.*, 965 So. 2d 662 (Miss. 2007).

ARGUMENT FOR GRANTING THE WRIT

I. The Court should grant the petition to resolve a conflict between the decision of the highest court in Mississippi and decisions from this Court over whether a Mississippi state common law rule is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(a).

A. The Supreme Court of Mississippi's decision conflicts with this Court's decision in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

Bauhaus involves the preemptive scope of the Employee Retirement Income Security Act of 1974 ("ERISA"), specifically the scope of 29 U.S.C. § 1144(a). In reaching its decision in this case, the Supreme Court of Mississippi failed to acknowledge landmark precedent set forth by this Court in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990), and as a result, the Supreme Court of Mississippi's decision directly conflicts with previous decisions from this Court. This Court's analysis in *FMC Corp.* is landmark to ERISA preemption cases because it sets up the framework under which courts are to determine whether a state law should be preempted by ERISA's 29 U.S.C. § 1144(a). Congressional intent is the base from which the analysis starts. *FMC Corp.*, 498 U.S. at 58. The ERISA provision that directly addresses the preemption issue in *Bauhaus* is as follows:

> Except as provided in subsection (b) of this section, the provisions of this title and title

> IV shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 4(a) and not exempt under section (b). This section shall take effect on January 1, 1975.

29 U.S.C. § 1144(a) (emphasis added).

Under *FMC Corp.*, the scope of ERISA preemption under 29 U.S.C. § 1144(a) is broad, and every state law that "relates to" an employee benefit plan governed by ERISA is of federal concern. *FMC Corp.*, 498 U.S. at 59. ERISA turns over authority to states to enforce state laws that regulate insurance, but ERISA also makes clear under the "deemer" clause (29 U.S.C. § 1144(b)(2)(B)) that self-funded employee benefit plans, like the plan in *Bauhaus*, are not deemed to be an insurance company, an insurer, or engaged in the business of insurance for purposes of state laws falling under the "savings clause." *Id.* at 61. The "deemer clause" (29 U.S.C. § 1144(b)(2)(B)) and the "savings clause" (29 U.S.C. § 1144(b)(2)(A)) are not at issue here.

In *FMC Corp.*, this Court decided whether a Pennsylvania anti-subrogation law "relates to" an ERISA plan under 29 U.S.C. § 1144(a). A law "relates to" an ERISA plan if it has a "connection with" or "reference to" such a plan. *FMC Corp.*, 498 U.S. at 58. The Pennsylvania law at issue in *FMC Corp.* stated as follows:

> In actions arising out of the maintenance or use of a motor vehicle, there shall be no right

> of subrogation or reimbursement from a claimant's tort recovery with respect to . . . benefits . . . paid or payable under section 1719.

75 Pa. Cons. Stat. § 1720 (1987). This Court determined Pennsylvania's law has a "reference" and "connection with" ERISA plans. *FMC Corp.*, 498 U.S. at 59. The Court focused on the importance of applying ERISA preemption to state laws that "risk subjecting plan administrators to conflicting state regulations." *Id.* Under *FMC Corp.*, preemption should be applied where the enforcement of the state law would "require plan providers to design their programs in an environment of differing state regulations thereby complicating administration of nationwide plans." *Id.* at 60. ERISA plans are to be governed by "only a single set of regulations," and laws like the Pennsylvania law "prohibits plans from being structured in a manner requiring reimbursement in the event of recovery from a third party." *Id.*

The Mississippi law at issue in *Bauhaus* requires state court approval before assigning a minor's rights to insurance proceeds. The law was introduced in *McCoy v. Preferred Risk Ins. Co.*, 471 So. 2d 396, 398 (Miss. 1985) and firmly established in *Methodist Hosps. of Memphis v. Marsh*, 518 So. 2d 1227, 1228 (Miss. 1988). The *Bauhaus* plan's subrogation and reimbursement provision specifically obligates all plan participants, minors included, to reimburse the plan for benefits paid as a result of an accident for which the participant receives monies from third

parties. As such, the Mississippi law, when enforced against the plan in *Bauhaus*, subjects the plan administrator to state regulation that directly conflicts with the administration of the plan as it is written. Further, the Mississippi law reaches to the core of all ERISA plans covering participants in the state of Mississippi requiring all plan administrators, at the drafting stage of the plan, to acknowledge the authority of a state court to determine the applicability of its plan terms to minors. As a result, the Mississippi law, if not preempted, clearly and substantially disrupts the administration of nationwide plans and prohibits ERISA plans connected to Mississippi participants from being structured in a manner requiring reimbursement in the event of recovery from third parties. Judicial oversight of personal injury settlements involving minors, by itself, is not the problem in *Bauhaus*. The Mississippi law, in effect, gives the Mississippi chancery court the authority and ability, in providing such oversight, to abrogate the law under ERISA.

For these reasons, under *FMC Corp.*, the analysis and decision of the Mississippi Supreme Court in *Bauhaus* fails. Mississippi's law requiring state court approval for assignment of minor's rights clearly "relates to" and has a "connection with" ERISA plans and under 29 U.S.C. § 1144(a) and under *FMC Corp.*, it should be preempted.

B. The Supreme Court of Mississippi's decision conflicts with this Court's decision in *Egelhoff v. Egelhoff*, 532 U.S. 141 (2000).

The Supreme Court of Mississippi erred in *Bauhaus* not only because the court failed to acknowledge the preemption framework set forth in *FMC Corp.*, but also by failing to distinguish *Egelhoff v. Egelhoff*, 532 U.S. 141 (2000), which is controlling authority from this Court on the issue of ERISA preemption as it relates to laws like the Mississippi state common law at issue in *Bauhaus*.

In *Egelhoff,* Petitioner Donna Egelhoff's deceased ex-husband, prior to his death, designated her as the beneficiary of a life insurance policy and pension plan provided by the deceased husband's employer. *Id.* at 44. The plans were covered by ERISA. *Id.* The conflicting Washington statute at issue provided that the designation of a spouse as the beneficiary of a non-probate asset is revoked automatically upon divorce. *Id.* The deceased husband's children argued that they were entitled to the proceeds of these plans because the Washington statute disqualified petitioner's ex-wife, Ms. Egelhoff, as a beneficiary and, in the absence of a qualified named beneficiary, the proceeds would pass to them as the ex-husband's heirs. *Id.* The terms of the plan would distribute the proceeds differently. *Id.*

Because the Washington state law affected the manner in which health benefits are paid to and from

the ERISA-covered plan due to the death of a covered person, the law was preempted by ERISA. In *Egelhoff*, the Court could have been describing the way that the Mississippi law at issue here should have been applied to *Bauhaus*.

> Petitioner [Ms. Egelhoff] argued that the Washington statute had an impermissible connection with ERISA plans. We agree. The statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrators must pay benefits to the beneficiaries chosen by state law, rather than those identified by the plan documents. The statute thus implicates an area of core ERISA concern. In particular, it runs counter to ERISA's commands that a plan shall 'specify the basis on which payments are made to and from a plan,' § 1102(b)(4), and that the fiduciary shall administer the plan 'in accordance with the documents and instruments governing the plan,' § 1104(a)(1)(D).

Id. at 147.

The Supreme Court of Mississippi supported its decision with the presumption that minor's rights fall within areas of law traditionally regulated by the states, more specifically, family law involving minors. This Court's analysis in *Egelhoff* clearly rejects the reasoning for the Supreme Court of Mississippi's decision. In response to an argument that family law and probate law fall under areas of law traditionally presumed to be regulated by the states, this Court

clarified that such a presumption can be "overcome where, as here, Congress has made clear its desire for preemption." *Egelhoff*, 532 U.S. at 151. The Mississippi Supreme Court errs in framing the issues in *Bauhaus* as ones limited to family law. The legal questions in *Bauhaus* are not limited to family law; rather, the issues involve a direct intervention in the administration of an ERISA plan with the effect of invalidating a Plan provision and extinguishing a Plan's right to obtain reimbursement of medical expenses that it paid.

In *Bauhaus*, as in *Egelhoff*, the ERISA plan terms yield a different result on how plan assets are recovered by the plan than does the Mississippi chancery court approval requirement. The Mississippi law would allow the monies recovered by the Minor to be retained by the Minor without being subject to the Plan's subrogation and reimbursement provision. The plan in *Bauhaus*, however, gives the plan a right to recoup benefits paid on behalf of covered persons – including minors, due to an incident – so long as another recovery is made because of the same incident, regardless of whether the covered person, the covered person's spouse, or the covered person's wrongful death beneficiaries makes the recovery.

Additionally, the same concerns expressed by this Court in *Egelhoff*, *supra*, regarding the interference that such state laws have on national uniformity, apply in *Bauhaus*. As the Court explained in *Egelhoff*, "[p]lan administrators cannot make payments simply by identifying the beneficiary specified by the plan

documents. Instead they must familiarize themselves with state statutes so that they can determine whether the named beneficiary's status has been 'revoked' by operation of law." *Egelhoff*, 532 U.S. at 148. Similarly, here, if state laws like Mississippi's chancery court approval requirement is not pre-empted by ERISA, then administrators will be required to master anti-subrogation laws throughout the United States to determine whether the plan terms are enforceable. Not only does Mississippi's chancery court rule interfere with ERISA-covered health plans' administration of plans pursuant to plan terms, but also, this law essentially requires these health plans to incur costs of retaining counsel and opening a case in Mississippi state court each time a minor requests coverage under an ERISA-covered health plan.

For these reasons, the Mississippi Supreme Court erred. Even if minor's rights fall under areas of law traditionally regulated by the states, here, under *Egelhoff* and 29 U.S.C. § 1144(a), the Mississippi chancery court rule, as it conflicts with the *Bauhaus* plan and other ERISA plans, must be preempted.

CONCLUSION

The conflict between the Supreme Court of Mississippi and the decisions of this Court as to whether Mississippi's chancery court approval law is preempted by ERISA, 29 U.S.C. § 1144(a) threatens an important

aspect of administration and cost containment for employee benefit plans. The Supreme Court of Mississippi failed to acknowledge the authoritative precedent decided by this Court in *FMC Corp.* and *Egelhoff* for this preemption issue. This Court should grant the Petition and resolve the conflict between the Supreme Court of Mississippi and this Court, providing uniformity in the administration of employee benefit plans governed by ERISA.

Respectfully submitted,

THOMAS H. LAWRENCE
Counsel of Record
LANCE K. OLIVER
POLLY M. HALEY
Counsel of Record for Petitioner
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
(901) 844-4430

Dated: December 20, 2007

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2006-CA-00465-SCT

IN RE: GUARDIANSHIP OF R.D.H., A MINOR: BAUHAUS USA, INC.

v.

LILLIE REGINA HOLMES COPELAND, NATURAL GUARDIAN AND NEXT FRIEND OF R.D.H., A MINOR, BANCORP-SOUTH BANK AND BILL BENSON, CHANCERY CLERK

DATE OF JUDGMENT:	03/7/2006
TRIAL JUDGE:	HON. TALMADGE D. LITTLEJOHN
COURT FROM WHICH APPEALED:	LEE COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	THOMAS H. LAWRENCE POLLY MONTGOMERY HALEY C. R. MONTGOMERY
ATTORNEYS FOR APPELLEES:	ROY O. PARKER, JR. LES ALVIS GARY L. CARNATHAN
NATURE OF THE CASE:	CIVIL – OTHER
DISPOSITION:	AFFIRMED – 09/27/2007
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

GRAVES, JUSTICE, FOR THE COURT:

FACTS AND PROCEDURAL HISTORY

¶1. R.D.H., a minor, was injured in an automobile accident on June 1, 1996. H. was covered under the Bauhaus Group Employee Benefit Plan (the Plan) as a dependent of her mother and guardian, Lillie Regina Holmes Copeland.[1] The Plan advanced payments for H.' medical expenses of more than $46,000.[2]

¶2. The Plan contains a reimbursement and subrogation clause, which states:

> Medical care benefits are not payable to or for a person covered under this Plan when the injury or illness to the Covered Person occurs through the act, omission or alleged negligence of another person or which arises out of any claim or cause of action which may accrue against any third party for responsible injury, illness or death. . . .
>
> However, the plan may elect to advance payment for Medical Care expenses incurred for an injury or illness in which a third party may be liable if the Covered Person agrees to the following:

---

[1] Copeland was an employee of Bauhaus.

[2] Copeland asserts damages of $46,336.31; Bauhaus asserts that the damages were $46,229.45.

> The Covered Person will reimburse the Plan out of the Covered Person's recovery for all benefits paid by the Plan. The Plan will be reimbursed prior to the Covered Person receiving any monies recovered from a Third Party or their insurer as a result of judgment, settlement or otherwise. . . .

¶3. Copeland, on behalf of H., filed suit against third-party tortfeasors and subsequently entered into a settlement agreement for $750,000. Bauhaus asserted a subrogation lien on the advance payments of medical benefits to H.

¶4. Copeland then filed a Petition for Authority to Settle Doubtful Claim of Minor, requesting approval of the final settlement offer. Copeland agreed that the portion of the settlement over which rights were contested, $78,161.47, would be deposited into the registry of the Lee County Chancery Court until resolution of rights by the court. Further, Copeland asked the court to find the subrogation claim invalid since H. was not made whole by the settlement. Subsequently, the chancery court approved the final settlement and released the tortfeasors but left the $78,161.47 in the court registry.

¶5. Bauhaus filed a motion for summary judgment on January 15, 2004, asserting that Mississippi law is pre-empted by the Employee Retirement Income Security Act of 1974 (ERISA) and that the plan provides Bauhaus with the right of full reimbursement. The chancery court denied Bauhaus' motion on June 4, 2004, finding that ERISA does not pre-empt

Mississippi law. Specifically, the court held: "After reviewing the briefs of the parties, and the pertinent case law, including the federal law in this case, the Court finds that the case law in regard to this matter has been well settled, and that the administration of a minor's estate is entirely a matter of state law, and is not pre-empted by ERISA."

¶6. By opinion issued on October 7, 2005, and subsequent order on March 7, 2006, the chancery court granted Copeland's petition to settle doubtful claim and ordered disbursement to H. of the funds held in the registry. Thereafter, Bauhaus filed this appeal, raising the following issues: 1) Whether the chancery court incorrectly held that Mississippi's made-whole rule applied to cases involving minors despite the Mississippi Supreme Court's ruling in ***Yerby v. United Healthcare Insurance Co.***, 846 So. 2d 179 (Miss. 2002); and 2) whether the chancery court incorrectly held that ERISA does not pre-empt Mississippi's common law rule requiring chancery court approval to assign a minor's right to insurance proceeds. This Court finds that ERISA does not pre-empt state law in the instant case and affirms the judgment of the Lee County Chancery Court.[3]

---

[3] Even if we determined that ERISA pre-empts state law, Bauhaus' claim that it had a right to reimbursement from a non-party to its plan would have to be analyzed under federal common law. *See* ***Firestone Tire and Rubber Co. v. Bruch***, 489 U.S. 101, 110, 109 S. Ct. 948, 103 L. Ed. 2d 80 (1989).

ANALYSIS

¶7. The deciding issue in this case is whether ERISA pre-empts the right of the state court with regard to assigning a minor's rights to insurance proceeds. This issue has previously been addressed by this Court. *See* ***Cooper Tire & Rubber Co. v. Striplin***, 652 So. 2d 1102 (1995). In ***Striplin***, this Court held that ERISA does not pre-empt state law requiring court approval for contracts affecting a minor's estate with regard to subrogation rights of the ERISA plan to insurance proceeds due to the child. The Court found:

> It is clear that state courts have traditionally regulated minors' business. ***Miss. Const. Art. 6 § 159*** ("The chancery court shall have full jurisdiction in the following matters and cases, viz: (d) Minor's business"); ***Alack v. Phelps***, 230 So. 2d 789 (Miss. 1970) (minors are under the disability of age and cannot legally act for themselves, therefore, state equity courts are required to protect their interest). For these reasons, Cooper Tire's pre-emption argument is without merit.

Id. at 1104. Further, this Court reiterated the necessity of court approval prior to assigning a child's rights to insurance proceeds. *See* ***Methodist Hosps. of Memphis v. Marsh***, 518 So. 2d 1227 (1988) (mother had no legal authority, absent prior chancery court approval, to execute any document granting a lien against the estate of an injured minor); and ***McCoy v. Preferred Risk Ins. Co.***, 471 So. 2d 396

(1985) (parents had no authority to assign uninsured motorist benefits to hospital).

¶8. The United States District Court for the Northern District of Mississippi found that ERISA does not pre-empt state law in the instant case.[4] The Fifth Circuit Court of Appeals affirmed the district court's dismissal of the suit as not authorized by ERISA but did not reach the pre-emption argument.[5]

¶9. In the factually similar case of ***Clardy v. ATS, Inc. Employee Welfare Benefit Plan***, 921 F. Supp. 394 (N.D. Miss. 1996), the District Court set out the following standard: "[F]ederal law will only preempt a state law pertaining to domestic relations if: 1) Congress has positively expressed its intent to preempt the state law and 2) the state law does major damage to a clear and substantial federal interest." ***Id.*** at 398 (citing ***Boggs v. Boggs***, 849 F. Supp. 462, 465 (E.D. La. 1994), *rev'd*, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997), and ***Hisquierdo v. Hisquierdo***, 439 U.S. 572, 581, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979)). The District Court set out that the "ERISA preemption is not all-encompassing, and state actions which affect employee benefit plans in 'too tenuous, remote, or peripheral a manner' will not justify a

---

[4] ***Bauhaus USA, Inc. v. Copeland***, 2001 U.S. Dist. LEXIS 24108 (N.D. Miss. 2001).

[5] ***Bauhaus USA, Inc. v. Copeland***, 292 F.3d 439 (5th Cir. 2002).

finding that the law 'relates to' a plan." The District Court further found:

> ERISA does indeed state its intent to preempt state law by positive enactment. [. . .] However, this court can find no damage to any clear and substantial federal interest in this case which would justify preemption of this state law of domestic relations. Indeed, it is the opinion of this court that the opposite is true. The most fundamental concern of Congress in enacting ERISA was "the continued well-being and security of employees and their dependents." [. . .] Displacing this state law requirement which polices the disposition of a minor's rights would take away a protection from the dependents of an employee, rather than ensure their continued well-being and security.

Clardy, 921 F. Supp. at 398 (citations omitted). The ***Clardy*** court further found:

> [T]he state law under consideration today does not prevent subrogation of claims, nor does it even directly address the matter of subrogation. The administration of a minor's estate is entirely a matter of state law, and is law of general application which affects a broad range of matters entirely unrelated to ERISA plans. "[A] preemption provision designed to prevent state interference with federal control of ERISA plans does not require the creation of a fully insulated legal world that excludes these plans from regulation of any purely local transaction." [Citation

> omitted]. The defendants in this case would have this court preempt not a state law which impinges upon contractual subrogation rights under ERISA, but a state law of general application which has only an incidental effect upon an ERISA plan. The state law in question today relates to ERISA in "too tenuous, remote, or peripheral a manner" to be preempted in this case.

Id. at 399.

¶10. In ***Boggs v. Boggs***, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997), the United States Supreme Court found that ERISA pre-empts a state law allowing a non-participant spouse to transfer by testamentary instrument an interest in undistributed pension plan benefits. Specifically, the Court in *Boggs* found:

> In the face of this direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand. Conventional conflict pre-emption principles require pre-emption "where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [Citations omitted]. It would undermine the purpose of ERISA's mandated survivor's annuity to allow Dorothy, the predeceasing spouse, by her testamentary transfer to defeat in part Sandra's entitlement to the annuity § 1055 guarantees her as the surviving spouse. This cannot be. States are

> not free to change ERISA's structure and balance.

Id. at 844.

¶11. There is no direct clash between state law and the provisions of ERISA in the instant case. Moreover, compliance with both federal and state regulations is not a physical impossibility. Mississippi law does not absolutely prohibit assignment, but requires prior chancery approval.

¶12. Further, there is clearly established precedent of the United States Supreme Court to support a finding against pre-emption in the instant case. The United States Supreme Court has said:

> Insofar as marriage is within temporal control, the States lay on the guiding hand. "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." ***In re Burrus***, 136 U.S. 586, 593-594 (1890). Federal courts repeatedly have declined to assert jurisdiction over divorces that presented no federal question. See, *e.g.*, ***Ohio ex rel. Popovici v. Agler***, 280 U.S. 379 (1930). On the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the *Supremacy Clause* to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. ***Wetmore v. Markoe***, 196 U.S. 68, 77 (1904). A mere conflict in words is not sufficient. State family

> and family-property law must do "major damage" to "clear and substantial" federal interests before the *Supremacy Clause* will demand that state law be overridden. ***United States v. Yazell,*** 382 U.S. 341, 352 [86 S. Ct. 500, 15 L. Ed. 2d 404] (1966).

Hisquierdo v. Hisquierdo, 439 U.S. 572, 581, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979). *See also* ***Rose v. Rose,*** 481 U.S. 619, 625, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987).

¶13. In ***Yazell,*** the United States Supreme Court affirmed the appellate court in finding that federal law did not pre-empt a Texas statute. Specifically, the Court found:

> We decide only that this Court, in the absence of specific congressional action, should not decree in this situation that implementation of federal interests requires overriding the particular state rule involved here. Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements. They should be overridden by the federal courts only where clear and substantial interests of the National Government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied.

Id. at 352. Further, "[e]ach State has its complex of family and family-property arrangements. There is

presented in this case no reason for breaching them." ***Id.***

¶14. Bauhaus cites ***Egelhoff v. Egelhoff***, 532 U.S. 141, 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001) as authority for pre-emption. In ***Egelhoff***, the United States Supreme Court held that ERISA pre-empted a Washington state statute which provided that the designation of a spouse as a beneficiary of nonprobate assets was revoked automatically upon divorce, to the extent that the state statute applied to employee benefit plans governed by ERISA. Egelhoff divorced his wife and then died intestate two months later, with the former wife still being listed as a beneficiary under a life insurance policy and pension plan. The life insurance proceeds were paid to the former wife. Egelhoff's children by a previous marriage filed suit to recover the insurance proceeds and the pension plan benefits.

¶15. The United States Supreme Court held that ERISA pre-empted the Washington state statute. In doing so, the Court acknowledged that "Courts have disagreed about whether statutes like that of Washington are pre-empted by ERISA." ***Egelhoff***, 532 U.S. at 146. Further, "we have recognized that the term 'relate to' cannot be taken 'to extend to the furthest stretch of its indeterminacy,' or else 'for all practical purposes pre-emption would never run its course.'" ***Id.*** (Citations omitted). Moreover, "to determine whether a state law has the forbidden connection, we look both to the 'objectives of the ERISA statute as a guide to the scope of the state law that Congress

understood would survive,' as well as to the nature of the effect of the state law on ERISA plans." ***Id.*** at 147 (citing ***California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.***, 519 U.S. 316, 325, 136 L. Ed. 2d 791, 117 S. Ct. 832 (1997)).

¶16. The Court agreed that the Washington statute had impermissible connections with ERISA plans, finding:

> The statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents. The statute thus implicates an area of core ERISA concern. In particular, it runs counter to ERISA's commands that a plan shall 'specify the basis on which payments are made to and from the plan,' . . . . In other words, unlike generally applicable laws regulating 'areas where ERISA has nothing to say,' ***Dillingham***, 519 U.S. at 330, which we have upheld notwithstanding their incidental effect on ERISA plans, see, *e.g.*, *ibid.*, this statute governs the payment of benefits, a central matter of plan administration.

Egelhoff, 532 U.S. at 147-48.

¶17. In analyzing the involvement of both family law and probate law, the Court reiterated that there is "a presumption against pre-emption in areas of

traditional state regulation such as family law. . . . But that presumption can be overcome where, as here, Congress has made clear its desire for pre-emption." ***Id.*** at 151.

CONCLUSION

¶18. Family law is an area traditionally regulated by the states. There is a presumption against pre-emption. Although ERISA does state its intent to pre-empt state law by positive enactment, there is no clear intention of Congress to pre-empt cases dealing with minors' rights. Moreover, there is no damage to any clear and substantial federal interest. Accordingly, for the reasons stated above, the judgment of the Lee County Chancery Court is hereby affirmed.

¶19. **AFFIRMED.**

SMITH, C.J., WALLER AND DIAZ, P.JJ., CARLSON, DICKINSON, RANDOLPH AND LAMAR, JJ., CONCUR. EASLEY, J., CONCURS IN RESULT ONLY.

IN THE CHANCERY COURT OF LEE COUNTY, MISSISSIPPI

GUARDIANSHIP OF R.D.H., A MINOR, LILLIE REGINA HOLMES COPELAND, GUARDIAN	**Plaintiffs**
vs.	**Cause No. 97-0364**
BAUHAUS USA, INC., ET AL	**Defendants**

ORDER

(Filed Mar. 7, 2006)

Pursuant to the Opinion issued on October 7, 2005, it is hereby ORDERED, ADJUDGED AND DECREED that the Plaintiff's Amended Petition To Settle Doubtful Claim is granted and Defendants' Petition For Subrogation Interest is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the findings of fact and conclusions of law stated in the Court's April 29, 2004, Opinion (attached hereto as Exhibit A), and the Court's October 7, 2005, Opinion (attached hereto as Exhibit B) are incorporated herein as part of this Court's judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Chancery Clerk of Lee County, Mississippi is hereby authorized to disburse the funds in this matter held in the registry of the Court to

R.D.H., a minor, Lillie Regina Holmes Copeland, Guardian, with all accrued interest.

Pursuant to Mississippi Rules of Civil Procedure, this final judgment is hereby entered.

ORDERED, ADJUDGED AND DECREED this the 7th day of March, 2006.

/s/ Talmadge D. Littlejohn
TALMADGE D. LITTLEJOHN
CHANCELLOR

APPROVED AS TO FORM ONLY:

/s/ Polly M. Haley
Polly M. Haley (MS. Bar No. 101151)
LAWRENCE & RUSSELL, LLP
5050 Poplar Ave., Ste. 1717
Memphis, TN 38157
Telephone: (901) 844-4441
Facsimile: (901) 844-4435
Attorney for Defendants

IN THE CHANCERY COURT OF LEE COUNTY, MISSISSIPPI

GUARDIANSHIP OF R.D.H., A MINOR, LILLIE REGINA HOLMES COPELAND, GUARDIAN **Plaintiffs**

vs. **Cause No. 97-0364**

BAUHAUS USA, INC., THOMAS INDUSTRIES GROUP LIFE AND HEALTH PLAN, BILL BENSON, AND BANCORP SOUTH **Defendants**

ORDER DENYING SUMMARY JUDGMENT

(Filed Jun. 4, 2004)

This day, this cause came on to be heard on the Defendant Bauhaus USA, Inc.'s Motion For Summary Judgment, and on the Defendant Thomas Industries Group Life and Health Plan's Motion for Summary Judgment, and the Court, having considered the motions, hearing oral argument from the parties, and being advised in the premises, finds that the motions are not well-taken and should be denied. A separate opinion has been rendered in this matter by the Court this date.

At issue in the present motions, is whether the above two defendants are entitled to a judgment as a matter of law, regarding funds that were interpled into the registry of the Chancery Court of Lee County, Mississippi, said funds were recovered in a lawsuit

filed on behalf of the minor, R.D.H., resulting from injuries she received in an automobile accident. The defendants, Bauhaus and Thomas, have paid for medical bills for the minor, under separate health plans, governed by ERISA. Defendants claim to be entitled to the finds, and have filed separate motions for summary judgment.

At issue is whether ERISA preempts the state law here governing minor's funds. State law requires Chancery Court approval before minor's funds may be assigned. Here, both defendants claim funds of the minor's, wherein there is no Chancery Court approval for assigning the minor's funds.

After reviewing the briefs of the parties, and the pertinent case law, including the federal law in this Case, the Court finds that the case law in regard to this matter has been well settled, and that the administration of a minor's estate is entirely a matter of state law, and is not preempted by ERISA. This case is at least the third such case that has been ruled upon by the District Courts of the Northern District of Mississippi, in which they have consistently ruled that ERISA does not preempt the Mississippi anti-assignment rule.

This Court holds that under these facts, ERISA does not preempt the Mississippi anti-assignment rule that was announced in *McCoy v. Preferred Risk Ins. Co.*, as noted and reiterated in *Methodist Hospitals of Memphis v. Marsh.* Therefore, the motions for summary judgment are denied.

In accordance with MRCP Rule 56(h), the Court finds that Mississippi law regarding these matters is well settled, and, accordingly, under the Mississippi Litigation Accountability act, and applying the factors found in the Mississippi case of *McKee v. McKee,* and the Federal District Court decision in *Crook Motor Company v. Goolsby,* the Court finds that the Motion of Bauhaus USA, Inc. for Summary Judgment was filed without merit and attorneys' fees should be awarded to the plaintiffs in a reasonable amount to Be determined by this Court based upon plaintiffs presenting to this Court their affidavit showing those attorneys' fees that were connected with this Motion for Summary Judgment only.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that.

1. Defendant Thomas Industries Group Life and Health Plan's motion for summary judgment is hereby denied;

2. Defendant Bauhaus USA Inc.'s motion for summary judgment is hereby denied and reasonable attorney fees are hereby awarded to Plaintiffs against Bauhaus USA Inc. only upon Plaintiffs attorneys submitting their affidavits to this Court showing those attorneys fees that were connected with this motion for summary judgment only.

ORDERED, ADJUDGED AND DECREED, this the 28th day of May 2004.

/s/ Talmadge D. Littlejohn
TALMADGE D. LITTLEJOHN
CHANCELLOR

APPROVED AS TO FORM ONLY:

/s/ Roy O. Parker Jr.
ROY O. PARKER, JR., ESQ.
ATTORNEY FOR PLAINTIFFS

/s/ Polly Haley
POLLY M. HALEY, ESQ.
ATTORNEY FOR DEFENDANT
BAUHAUS USA, INC.

/s/ Michael Tapscott
MICHAEL D. TAPSCOTT, ESQ.
ATTORNEY FOR DEFENDANT
THOMAS INDUSTRIES